

**STATE OF NORTH CAROLINA**  
**COUNTY OF IREDELL**

**IN THE GENERAL COURT OF JUSTICE**  
**DISTRICT COURT DIVISION**  
**22<sup>nd</sup> JUDICIAL DISTRICT**

**ORDER**

Pursuant to General Statute §7A-146(2) and Rule 2 of The General Rules of Practice for the District and Superior Courts, IT IS HEREBY ORDERED that the foregoing rules for the District Court of The Twenty-Second Judicial District shall be effective on January 1, 1998.

These rules supersede all previous civil local rules.

Adopted this the 27<sup>th</sup> day of October, 1997.

Robert W. Johnson  
Chief District Court Judge

**TWENTY-SECOND JUDICIAL DISTRICT  
LOCAL RULES OF DISTRICT CIVIL COURT**

Effective January 1, 1998

**Rule 1. General Rules**

(a) **Purpose.** In accord with NCGS §7A-34 and Rule 2 of the General Rules of Practice, the Judges of the 22nd Judicial District adopt these rules to institute a case management plan to provide for the just, orderly and prompt disposition of civil jury, non-jury, and domestic relations cases.

(b) **Discretion.** In the event these rules fail to address a specific matter, the Clerks of Superior Court or their designee are authorized to act with discretion, subject to consulting with the Chief District Court Judge or the Judge Presiding at a particular term.

(c) **"Civil" and "Child Support" Clerk Designation Requests.** The Chief District Court Judge requests that one or more clerks in each county be designated "Civil Clerks", to handle all civil calendaring matters with the Chief District Court Judge and the presiding District Court Judge. It is further requested that a clerk who monitors child support payments be designated to monitor child support cases for compliance with G.S. §50-32.

(d) **Copies of Rules.** The Clerks of Superior Court of Alexander, Iredell, Davie, and Davidson Counties shall print and distribute a copy of these rules to each member of the Bar of the 22nd Judicial District. The Clerks of Superior Court will maintain a supply of printed rules, as well as associated forms to be furnished to attorneys outside of the 22nd District, and unrepresented parties, upon request.

(e) **Citation.** These rules may be cited as "22nd Local Rule \_\_\_\_".

(f) **Amendments and Modifications** -- These rules are subject to amendment and modification as experience indicates and requires.

**Rule 2. Pleadings**

(a) **Supplemental Pleadings.** In cases involving divorce from bed and board, child custody, or support, or alimony, parties may supplement their original pleading or alimony complaint to allege one year separation and pray for Absolute Divorce. Pleadings may **not** be supplemented after a final judgment has been entered and the file closed.

(b) **Financial Needs Affidavits in Child Support, Alimony, Alimony Pendente Lite Cases.**

- (1) **Filing Required.** Simultaneous with the filing of all child support, alimony, alimony pendente lite, and in all cases involving an alleged change of circumstances necessitating a change in support, or any combination thereof, the attorney for the party or the party seeking support or a change of support shall file an affidavit setting forth the financial condition and financial needs of the person(s) for whom support is sought.
- (2) **Form.** The affidavit shall be on Form 22B and shall be typewritten or printed legibly in ink.
  - a. **Both Parties to File.** Each party file a Form 22B. Respondent shall serve its Form 22B on the opposing counsel five (5) days before the scheduled hearing, whether answer is filed or not.
  - b. **Admissibility.** Financial affidavits executed pursuant to this rule shall be admissible in evidence without further authentication, if the party that executed the affidavit is present in Court.
  - c. **Limited Exception.** In NCGS Chapter 50B Cases and Emergency Temporary Custody Orders which also require child support, the Form 22B shall be filed and exchanged by both parties no later than thirty (30) days from the date of the filing of the complaint or service whichever comes first.
- (3) **Copies.** Counsel or party shall make at least two additional copies of the affidavit for the hearing of the case to be furnished to the Judge presiding and opposing counsel or party when the case is tried.
- (4) **Physical Custody in Initial Child Support Cases.** In cases of initial child support, the initial pleadings must state which party has physical custody.

**Rule 3. Equitable Distribution Rules.**

- (a) **Forms to be Filed; Form and Content.**
  - (1) **Generally.** Unless agreed to otherwise by the parties, each party shall file **Equitable Distribution Affidavits.**
  - (2) **Form and Content.** Equitable Distribution Affidavits shall be filed in accord with these Rules both as to form and content and shall be TYPED. These affidavits should be studied carefully and must be executed fully and accurately. Continuances will not be granted to cure affidavit errors or omissions.
  - (3) **Order of Listing of Assets and Liabilities.** The party upon whom service of the initial Equitable Distribution Inventory Affidavit is made shall list assets and liabilities in the same order as in the initial Equitable Distribution Inventory Affidavit.

- (4) **Equitable Distribution Inventory Affidavit.** The Equitable Distribution Inventory Affidavit, Form 22I, lists all property claimed by the party to be marital property and all property claimed by the party to be separate property, and the estimated date-of-separation fair market value of each item of marital and separate property. The affidavit shall be subject to amendment and shall not be binding at trial as to completeness or value.
  - (5) **Short Form Equitable Distribution Affidavit.** In cases in which there are either fewer than 25 items of marital property or where the net fair market value of the all marital property totals less than \$50,000, or where the parties so agree, the parties may file Short Form Affidavits in accord with Form 22S. The Short Form Equitable Distribution Affidavit, Form 22S, shall be in the same form as the **Equitable Distribution Inventory Affidavit**.
  - (6) **Long Form Equitable Distribution Affidavit.** In all cases where the Short Form Affidavit is not permitted, the parties shall file Long Form Affidavits in accord with Form 22L. The Long Form Equitable Distribution Affidavit is Form 22L.
  - (7) **Administrative and Scheduling Order.** After the Administrative and Scheduling Conference, the Presiding Judge shall designate the party to prepare an Administrative and Scheduling Order. The Administrative and Scheduling Order is Form 22ASO.
  - (8) **Short Form Pretrial Order.** In cases where the parties have submitted Short Form Equitable Distribution Affidavits, the Presiding Judge (in the absence of agreement by the parties), shall designate the party to prepare the Short Form Pretrial Order. The Short Form Pretrial Order is Form 22PTS.
  - (9) **Long Form Pretrial Order.** In cases at least one party has submitted a Long Form Equitable Distribution Affidavit, the Presiding Judge (in the absence of agreement by the parties), shall designate the party to prepare the Long Form Pretrial Order. The Long Form Pretrial Order is Form 22PTL.
- (b) **Timeline.**
- (1) Day 0 Prayer for Equitable Distribution filed by complaint or answer with clerk by a party. At that time the party so filing shall apply to the court to conduct a scheduling and discovery conference.
  - (2) Day 90 Party who first asserted the Equitable Distribution claim shall prepare and serve an **Equitable Distribution Inventory Affidavit** or the **Long Form Equitable Distribution Affidavit** upon the other party. The District Court may extend the time limits for good cause shown.
  - (3) Day 120 Party upon whom service of the initial Equitable Distribution Inventory Affidavit is made shall prepare and serve an inventory affidavit upon the other party. The District Court may extend the time limits for good cause shown.
  - (4) Day 150 **Administrative and Scheduling Conference.** At the

Administrative and Scheduling conference, the court shall determine the following:

- (a) Designation of case as "Complex". If a case is determined to be complex, a single judge shall be assigned to the case to completion and the complex case deadlines shall apply.
- (b) Alternative Dispute Resolution. The Court shall rule on mandatory mediation and shall encourage alternative dispute resolution where such is not mandated.
- (c) Discovery Schedule. Protective orders shall be granted for unduly voluminous discovery.
- (d) Appraisers and Expert Witnesses. The Court shall rule on motions for appointment of appraisers and expert witnesses and shall set a date for the disclosure of expert witnesses.
- (e) Rule on Motions and Applications including determination of the date of separation and relevant temporary orders.
- (f) Usage of Short or Long Form Pretrial Orders.
- (g) Set date of initial pretrial conference, final pretrial conference date and trial date.

(5) Day 180 **Initial Pretrial Conference.** [Day 240 if complex case]. At the Initial Pretrial Conference, the court shall

- (a) Enter a dates for the completion of discovery, the completion of a mediated settlement conference, if applicable, final pretrial conference, and trial.
- (b) Enter a **Short or Long Form Pretrial Order**, as applicable.

(6) Day 240 **Final Pretrial Conference and Trial.** [Day 300 if complex case]. The Court shall rule upon any matters reasonably necessary to effect a fair and prompt disposition of the case in the interests of justice. Modifications in the applicable Pretrial Order may be made at any time prior to trial with the consent of the parties and the Presiding Judge.

(c) **Referees, Appraisals, Alternative Dispute Resolution.**

- (1) **Reference.** The Court may order a reference before entering final judgment to assist the Court in resolving factual disputes concerning ownership of or identification of, marital property or valuation of specific assets. The costs of such a reference, unless otherwise agreed to by the parties and approved by the Court, will be taxed as part of the costs, and apportioned as deemed appropriate by the judge, and may be required to be paid in advance.
- (2) **Alternative Dispute Resolution and Neutral Evaluation.** Effective July 1, 1996, in all cases the Court may order mandatory mediation or neutral evaluation or both and shall encourage alternative dispute resolution. The Chief District Court Judge shall appoint a committee to establish guidelines for

mediation and to establish and maintain a list of approved mediators for Equitable Distribution mediation.

#### **Rule 4. Pre-Trial Conferences and Orders in Jury Cases.**

- (a) There shall be a pre-trial conference and order in every jury case, unless counsel and/or unrepresented parties stipulate in writing to the contrary and the Court approves the stipulations. Upon its own motion or upon request of any party, the Court may dispense with or limit the scope of the pre-trial conference or order.
- (b) The pre-trial order shall be prepared by the Plaintiff or Plaintiff's counsel and signed by the attorneys or unrepresented parties prior to the trial date. The form shall be in substance as shown in Rule 7 of the General Rules of Practice for District and Superior Courts. This order shall be completed, executed and presented at the time of the Judge's pre-trial conference.

#### **Rule 5. Calendaring and Scheduling.**

- (a) **Clerk's Duties Generally.** The Court calendars for the disposition of civil cases in the Twenty-Second Judicial District shall be set by the Clerks of Superior Court in Alexander, Iredell, Davie, and Davidson Counties with the supervision of the Chief District Court Judge and the Presiding Judge of a particular session.
  - (1) **Categories on Calendar.** The civil clerk shall make a separate division on each civil calendar as applicable as follows:
    - a. Uncontested Divorces
    - b. Ten Day Hearings
    - c. Initial Child Support Actions
    - d. Equitable Distribution Pretrials
    - e. Motions
    - f. Trials
    - g. Delinquent Judgments
    - h. Cleanup
  - (2) **Single Settings.** No case may be calendared for more than one session of civil court except by Peremptory Setting by the Chief District Court Judge. Calendar requests for more than one session will not be accepted.
  - (3) **Peremptory Settings.** A peremptory setting shall be granted only for good cause and compelling reason. Requests for a peremptory setting for cases involving persons who must travel long distances, have numerous expert witnesses, or for other extraordinary reasons, must be made to the Chief District Court Judge. No more than one (1) case will be peremptorily set for

trial on any term.

- (4) **Limit on Number of Contested Cases on Calendar.** The Civil Clerk may have the discretion to limit cases so that no more than twenty (20) contested motions and twenty (20) contested trials are scheduled.

- (b) **Uncontested Divorce Hearings.** Uncontested divorces will be heard at any term of court at the opening of court or at any other time convenient with the Presiding Judge. The judgments for these cases must be ready for signature when the judgment is entered. Corroborative witnesses will not be necessary.

(c) **Child Support Cases**

- (1) **Child Support Calendaring.** Pursuant to NCGS §50-32, except where paternity is at issue, when in any Complaint, Petition, Counterclaim, Answer or Motion where the initiating party or counsel seeking child support, the party or counsel shall, concurrently with the filing of the pleading, obtain a hearing date within sixty (60) days from the date of filing (defined as date of service) from the designated Clerk of Court.
- a. **Compliance with Statute.** Compliance with G.S. §50-32 can most easily be met by a temporary order for child support pending trial on the merits.
  - b. **Application.** This Rule shall apply to initial child support cases only in which the party actually having physical custody of the child is seeking support.
  - c. **Alternative Setting.** If it is not possible to schedule for a civil term, the clerk may schedule the hearing at support, juvenile, or as a last resort, a criminal session of court if the sixty (60) day time limit will run before the next civil term. Any scheduling for a support, juvenile or criminal session should be only after consulting with the Presiding Judge.
  - d. **Designation on Calendar.** The designated Clerk will schedule all child support actions for hearing . These cases should be designated on the court calendar as "Initial Child Support Actions".
  - e. **Notice.** The initiating party is responsible for giving notice of the hearing date and time to the opposing party in accordance with the Rules of Civil Procedure. The clerk should place the case on the calendar and mail a copy of the same per the local calendaring rules.
  - f. **Continuances.** For all actions involving child support, (excluding paternity cases) where service has been obtained, a continuance for a maximum of thirty (30) days may be allowed by the court if either party cannot be present at the hearing for good cause; or the parties have consented to a continuance. The party moving for a continuance is responsible for insuring that opposing party is notified of the request for continuance prior to the session of court for which the hearing is scheduled or as soon as a conflict becomes known.

- g. **Tracking.** The designated clerk will be responsible for manually tracking each child support case beginning with the implementation of these rules. The tracing of these cases by the designated clerk will be conducted to insure that a disposition of child support cases take place within the time limits of G.S. §50-12.
  
- (d) **Calendar Requests.** Any attorney or unrepresented party may request that a matter be placed on the civil calendar.
  - (1) **Calendar Request Form.** Requests for calendaring shall be in writing on Form 22D and delivered to the "Civil Clerk" of the county in which the action is pending.
  - (2) **Time Requirements.** Cases may be added to the published trial calendar by written Form 22D request no later than ten (10) days before the convening of the session of court, except:
    - a. **Uncontested divorces.** Uncontested divorces may be added on at any time, at any time convenient with the Presiding Judge.
    - b. **Temporary Restraining Order, Domestic Violence Orders, or Any Other Order Requiring Hearing Within Ten Days.**
      - (1) **Setting.** All hearings on a Temporary Restraining Order, Domestic Violence Orders, or any other Order requiring hearing within ten days must be scheduled for 9:30 A.M. on the day of court and the Presiding Judge will hear the matter at his convenience that day based upon his obligations to the court he is holding. If the term is a court term of more than one day duration, the hearing must be set for the first day of the term at 9:30 A.M.
      - (2) **Notification of Clerk.** The attorney granted a Restraining Order shall be responsible for notifying the appropriate clerk of court of the name of the case, type of hearing, date and time the hearing is scheduled, and if known, the attorney who represents the parties. The clerk of court will place the above information on the Presiding Judge's calendar and verbally notify the judge before court begins on that day.
  - c. **Calendaring Motions for Selection of ADR or Expedited Trial.** At any time following thirty (30) days from service of the initial pleadings or a Motion for Change in Circumstances, in any case involving child custody, child support, postseparation support or alimony, either party may calendar a Motion Requesting the Selection of ADR or expedited trial upon proper notice, as required by Rule 6(d) of the Rules of Civil Procedure. Said party shall be entitled to have the Motion added on to the next court calendar without the permission of the Chief District Court Judge.
  - d. **Calendaring Motions for Withdrawal of Counsel.** Counsel for a particular party may calendar a Motion to Withdraw upon proper notice,

as required by Rule 6(d) of the Rules of Civil Procedure. Said counsel shall be entitled to have the Motion added on to the next court calendar without the permission of the Chief District Court Judge.

- e. In any case in which a Motion or Hearing is previously scheduled, counsel for either party may add-on, subject to the Notice provisions of the North Carolina rules of civil procedure, any related motions or matters without the consent of the Chief District Court Judge. Upon verification to the clerk that proper notice to opposing counsel has been given, the clerk shall add-on said Motion or matter to the calendar in which the preexisting motion or hearing is already scheduled.
  - f. **Judge's Approval.** Other than as set out in these rules, a case shall be added to the calendar later than ten (10) days prior to the beginning of a session only if specifically approved by written order of the Presiding Judge, the Chief District Court Judge, or pursuant to a Temporary Restraining Order, Domestic Violence Order, or other order by a District Court Judge requiring a hearing within ten (10) days.
- (e) **Carry over Cases Not Heard During a Scheduled Term.** All cases or motions not reached during a term or in which a continuance was granted will be continued to a date certain and shall require no further notice except that the clerk will include them on the calendar or the add-on calendar and mail a copy of the same to all those parties as provided in the local calendaring rules.
- (f) **Cleanup calendars.** Cleanup calendars shall be prepared by the civil clerk in each county for a date designated by the Chief District Court Judge. The purpose of civil cleanup calendaring is to determine the status of pending cases, to dismiss actions for failure to prosecute, to set definite trial dates for older cases, and to rule on delinquent judgments or orders. Cleanup calendars shall include:
- (1) **Pending Orders.** All matters in which the case has been heard or settled and in which an Order is pending
  - (2) **Six Months Aging.** All matters in which the complaint or action was filed six months or more prior to the date of the cleanup calendar.
  - (3) **Delinquent Judgments.** In the event that the attorney responsible for the preparation of the judgment or order fails to submit the same within thirty (30) working days as required or fails to request an extension or otherwise comply, the designated civil clerk shall calendar the case at the next appropriate calendar with the designation "Delinquent Judgment".
  - (4) **Dismissal.** The presiding judge may, in his or her discretion, dismiss any action in which a moving party fails to appear for call of a cleanup calendar.
- (g) **Inactive Cases.** A case may be declared inactive If all parties and attorneys in a case agree that the ends of justice require the declaration of a case as inactive and removal of the case from the trial docket.

In such a case, the parties shall prepare a consent order, stating the reasons, for approval and signature of the Chief District Court Judge or Presiding Judge on a Cleanup Calendar, declaring the case inactive and closing the case file without prejudice to any party's right to have the matter reopened upon motion.

Such inactive cases shall be reviewed periodically by the Chief District Court Judge or his or her designee.

## **Rule 6. Calendar Call.**

- (a) **Calendar Call.** At calendar call, the Presiding Judge will attempt to set the cases for trial on a certain day and time during that term of Court. The Court, in setting matters for hearing during the term, will try to accommodate attorneys, parties, and witnesses.

If a case is on the calendar and has not been continued, all parties shall be available during the whole term for the hearing of their case. Attorneys, parties and witnesses shall provide the clerk with a telephone number where they can be reached during the term.

- (b) **Order of Trial and Hearings.** On the first day of court after the calendar call, the court will first hear any uncontested matters, short motions, place on record any settlement of cases, confer with attorneys about settling cases on the calendar, or hear any matter of short duration before the court begins the trial of more lengthy matters.
- (c) **Attorney Duties at Calendar Call as to Represented Parties.** Consistent with ethical requirements, when an attorney is notified to appear for setting of a calendar, pre-trial conference, hearing of a motion, cleanup calendar, or for trial, he or she must appear.
- (1) An attorney may appear by a partner, associate, or other attorney fully familiar with the particular case involved.
  - (2) A message or phone call to the clerk or other court official is not sufficient excuse for not being in court unless the excuse is a last minute emergency and with reasonable diligence the attorney could not contact the Presiding Judge before court convenes.
  - (3) The Presiding Judge may require a firm member or associate counsel to appear and try a matter on the calendar, if the counsel of record cannot be present and the case is an old case that has been on the docket several times without being heard. This is especially true in domestic matters and matters involving child support.
- (d) **Unrepresented Parties at Calendar Call** - Parties not represented by counsel, with

cases on the Trial Calendar, must be present for the calendar call on the first day of the term and remain until their case is scheduled for hearing, continued, or otherwise instructed by the Court.

- (e) **Cleanup Calendars.** Any attorney with a matter on a cleanup calendar must be present at calendar call unless a Consent Order or Voluntary Dismissal has been signed and filed with the Clerk or unless he or she has previously received express permission from the presiding judge to be absent. All unrepresented parties must be present at calendar call.
- (f) **Dismissal by Court for Nonappearance.** The failure of an attorney or unrepresented party to appear at calendar call, for either regular calendars or cleanup calendars, may result in dismissal of the applicable party's claims or action.
- (g) **Early Calendar Call, Iredell County.** Beginning 2:00 PM Thursday, November 6, 1997 and each Thursday thereafter there will be a calendar call for the purpose of setting cases for the following week. Clients will not need to be present, nor will they need to be present until their case is actually called for hearing.

Thursday afternoons will also be used for hearing uncontested divorces by Summary Judgment, equitable distribution pretrials, and determining what cases need to be scheduled for Alternative Dispute Resolution (ADR).

Thursday calendar call will not include G.S. 50-B Domestic Violence Orders. The Court will continue to review and hear these cases Monday morning.

- (h) **Early Calendar Call, Davidson County.** Beginning 9:30 AM Thursday, November 6, 1997 and each Thursday thereafter there will be a calendar call for the purpose of setting cases for the following week. Clients will not need to be present, nor will they need to be present until their case is actually called for hearing.

Thursday mornings will also be used for hearing uncontested divorces by Summary Judgment, equitable distribution pretrials, and determining what cases need to be scheduled for Alternative Dispute Resolution (ADR).

Thursday calendar call will not include G.S. 50-B Domestic Violence Orders. The Court will continue to review and hear these cases Monday morning.

## **Rule 7. Judgments and Settlements.**

- (a) **Submission in 30 Days.** All judgments and orders in all civil, juvenile, IV-D, and URESA cases are to be submitted to the Presiding Trial Judge for signature by the attorney designated by the Presiding Judge to prepare the Order or Judgment not

more than thirty (30) working days after announcement of the judgment or order.

- (b) **Dates Shown.** All judgments and orders submitted to a Judge for signature must show the following on the signature page of the judgment:
- (1) the date that judgment or order was announced by the court, and
  - (2) the date of signature by the Judge, unless it is the same date.
- (c) **Settlement.** If any case or motion on the trial calendar is settled prior to the beginning of the scheduled term, the plaintiff or plaintiff's attorney of record must notify the designated civil clerk of the appropriate county within twenty-four (24) hours of the settlement and advise who will prepare the judgment or order. Said order or judgment must be presented to a District Court Judge within thirty (30) working days of the notice to the designated clerk.
- (d) **Memorandum of Judgment.** If a case on a calendar for scheduled civil session is settled in whole or in part on the date it is scheduled to be heard or during that term, the attorneys or parties shall prepare a Memorandum of Judgment on Form 22A.
- (1) This form may be handwritten and may be continued on additional sheets if sufficient space is not provided on the first page.
  - (2) The parties should, after the memorandum is prepared, appear before the Presiding Judge so he can inquire of them in open court as to whether or not they agree with the memorandum of settlement. Such appearance is in the discretion of the Presiding Judge.
  - (3) No attorney is authorized to release his or her client or witness until the above procedure is followed.
  - (4) All remaining issues in the case should be clearly defined.
  - (5) The **Settlement** rules herein shall apply to Memorandums of Judgment.
- (e) **Extensions.** The attorney designated to prepare a judgment or order may file a motion with any District Court Judge for an extension of time in which to prepare the judgment or order prior to the expiration of the initial thirty (30) working days. Such motion shall be made in writing with notice to opposing counsel or party and may be allowed for good cause shown.
- (f) **Tendering of Proposed Orders and Judgments to Opposing Attorney.** Simultaneous with the presentation of the judgment or order to the Presiding Judge for signature, the attorney preparing and submitting the same shall tender a copy thereof to the opposing counsel (or in the absence of counsel, to the opposing party). Any objection to the proposed order or judgment must be made within five (5) working days of the receipt of the judgment or order. Where no objection is made within the time period, the Presiding Judge will sign the order or judgment as tendered. Tender of judgment or order is not required in IV-D or URESA cases.

## **Rule 8. Sanctions**

- (a) **Generally.** Failure to comply with any of these rules shall be sufficient grounds to deny any request made by said party and furthermore shall subject an action to dismissal or other sanctions allowed by law and deemed appropriate at the discretion of the Presiding Judge.
- (b) **Financial Needs Affidavit.** Failure to file Form 22B Financial Needs Affidavits may, in the discretion of the Presiding Judge, result in the responsible party's proffered testimony (either written or oral) not being allowed into evidence by the Court and may result in imposition of sanctions as set forth in Rule 37 of the Rules of Civil Procedure.
- (c) **Equitable Distribution.**
  - (1) **Equitable Distribution Inventory Affidavit.** In accord with NCGS §50-21(a), Equitable Distribution Inventory Affidavits are subject to the requirements of Rule 11 of the Rules of Civil Procedure, and are deemed to be in the nature of answers to interrogatories. Any party failing to supply the information required in the affidavit is subject to Rules 26, 33 and 37 of the Rules of Civil Procedure.
  - (2) **Equitable Distribution Affidavits (Short and Long Forms).** Failure to submit the applicable Equitable Distribution Affidavit required by these Rules according to the appropriate Form and in a timely manner may result in the responsible party's proffered testimony (whether written or oral) not being allowed into evidence by the Court.
  - (3) **Obstruction or Delay.** In accord with NCGS §50-21(e), upon motion of either party or upon the court's own initiative, the court shall impose an appropriate sanction on a party when the court finds that:
    - a. the party has willfully obstructed or unreasonably delayed, or has attempted to obstruct or unreasonably delay, discovery proceedings, including failure to make discovery, or has willfully obstructed or delayed or attempted to delay any pending equitable distribution proceedings, and
    - b. the willful obstruction or unreasonable delay of the proceedings is or would be prejudicial to the interests of the opposing party.
  - (4) **Exception.** Delay consented to by the parties is not grounds for sanctions.
  - (5) **Sanctions.** Sanctions under NCGS §50-21(e) may include the following orders for the obstructing or delaying party to pay the other party:
    - a. reasonable expense and damages incurred because of the willful obstruction or unreasonable delay,
    - b. reasonable attorneys' fee,
    - c. accountant, appraiser, or other expert to be appointed by the Court whose services the court finds are necessary to secure in order for the discovery or other equitable distribution proceeding to be timely

conducted.

(d) **Failure to Submit Judgments.**

- (1) When an attorney for a litigant fails to timely submit a Judgment, he or she is subject, in the discretion of the court, to the following sanctions:
  - a. A fine in the amount of Ten Dollars (\$10.00) per day for every day the judgment is delinquent;
  - b. A reasonable attorney fee if opposing counsel is directed to prepare the judgment or order to be paid to opposing counsel;
  - c. Criminal and/or civil contempt;
  - d. Dismissal of the action; and
  - e. Any other action the Presiding Judge may deem appropriate under the circumstances.
- (2) In the event an attorney fee or fine is levied hereunder, the Presiding Judge may remit part or all of the assessment or fine for good cause shown.

**Rule 9. Miscellaneous Provisions**

(a) **Bankruptcy.**

- (1) Any request to continue, hold or in any other way delay disposition of a case due to bankruptcy of one of the parties must be accompanied by certification of the bankruptcy filing of stay of proceeding from the United States Bankruptcy Court having Jurisdiction. The attorney for the bankrupt party shall prepare an injunction pursuant to the above authority, which shall be filed with the Clerk of Court and be presented to the appropriate judge. After sufficient notice, the judge will dismiss the civil action without prejudice. Such notice may be in writing by way of letter or in the form of a calendar.
- (2) Civil actions in which one of the parties declares bankruptcy will be disposed of in accordance with the following authority and procedure:
  - a. The Rules and Forms of Practice and Procedure in Bankruptcy,
  - b. Title 11 of the Code of the Laws of the United States of America.

- (b) **Attorneys Fees** -- In all cases in which an attorney seeks an award of fees, the attorney shall introduce an affidavit showing the attorney's time, hourly rate, and statement of customary and usual rates for similar attorney services in the community. A copy of the affidavit shall be served upon opposing counsel or the opposing party if unrepresented.

Any objection to contents of the affidavit must be made within five (5) working days of the receipt of the judgment or order. Where no objection is made within the time period, the Presiding Judge will accept the affidavit and rule thereon.

No award of attorneys fees will be made unless the affidavit is properly introduced

and served.

- (c) **Employers' Affidavits in Child Support, Postseparation Support and Alimony Cases.** In all cases involving child support, postseparation support and/or alimony, each party may submit to his or her employer an affidavit in form substantially equivalent to Form 22E. Upon completion by the employer, a copy of the affidavit shall be served on the opposing party's counsel (or on the party, if the party is unrepresented), and the original shall be filed in the case file at the courthouse. These affidavits shall be completed, served and filed at least 10 days prior to a scheduled hearing. Unless a party prior to trial files and serves a written objection to an employer's affidavit, and also issues a subpoena for the maker of the affidavit, an employer's affidavit shall be admissible in evidence without further foundation or authentication, and shall be considered by the court in setting support.

A party or the party's counsel may serve an employer's affidavit, together with a subpoena to produce documents for the date of the scheduled hearing, on the employer for the opposing party, and may advise the opposing party's employer by letter that the employer may avoid the necessity of appearing in court by returning the completed affidavit to the requesting party. A suggested form for such a letter is found in Form 22EL.

It shall be a violation of the Local Rules of Practice for a party or a party's attorney to impede in any way the efforts of the other party or the other party's attorney to obtain employers' affidavits as described in this rule. A party who willfully fails to comply with this rule may be assessed, in the discretion of the Court, the costs (including a reasonable attorney's fee) of the other party in obtaining the employer's affidavit.

- (d) **Continuance Rules.** See addendum A.

## **Appendix: Forms**

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|-----|-------|--|
| 10. | 22A   | Memorandum of Judgment                                 |
| 11. | 22B   | Financial Needs Affidavit                              |
| 12. | 22D   | Calendar Request (repealed)                            |
| 13. | 22I   | Equitable Distribution Inventory Affidavit             |
| 14. | 22S   | Short Form Equitable Distribution Affidavit            |
| 15. | 22L   | Long Form Equitable Distribution Affidavit             |
| 16. | 22ASO | Equitable Distribution Administrative Scheduling Order |
| 17. | 22PTS | Short Form Equitable Distribution Pretrial Order       |
| 18. | 22PTL | Long Form Equitable Distribution Pretrial Order        |
| 19. | 22E   | Employer Affidavit                                     |
| 20. | 22EL  | Letter to Employer                                     |